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**IN THE
COURT OF APPEALS OF INDIANA**

JEROME WILLIAMS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 03A01-0511-CR-505
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0110-CF-1351

February 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jerome Williams appeals his sentence for felony murder.¹ Williams raises one issue, which we revise and restate as whether the trial court abused its discretion in sentencing him. We affirm.

The relevant facts follow. In October 2001, Williams along with others planned and perpetrated a robbery against an eighty-two year old woman. During the robbery the woman was strangled and killed. On October 11, 2001, the State charged Williams with the following offenses: (1) Count I, murder², (2) Count II, felony murder, and (3) Count III, forgery as a class C felony.³ Pursuant to a plea agreement, on February 11, 2003, Williams pleaded guilty to Count II, felony murder. In exchange for Williams's guilty plea, the State agreed to dismiss the remaining charges. The trial court accepted Williams's guilty plea and sentenced him to serve an enhanced sentence of sixty years in the Indiana Department of Correction.

Williams appealed to this court, arguing that the trial court abused its discretion in sentencing him. On July 7, 2004, this court held that the trial court abused its discretion in improperly considering Williams's race as a significant aggravating circumstance to justify an enhanced sentence and remanded the case to the trial court for resentencing. Williams v. State, 811 N.E.2d 462, 465 (Ind. Ct. App. 2004).

¹ Ind. Code § 35-42-1-1 (2004) (subsequently amended by Pub. L. No. 151-2006, § 16; Pub. L. No. 173-2006, § 51).

² Id.

³ Ind. Code § 35-43-5-2(1) (2004) (subsequently amended by Pub. L. No. 45-2005, § 2; Pub. L. No. 106-2006, § 3).

During the resentencing hearing, the trial court heard testimony from Williams as well as arguments from both sides. Following Williams waiver of rights under Blakely, the trial court found the following significant aggravating circumstances: (1) the significant risk Williams would commit another crime due to his character; (2) the nature and circumstances of the crime in that Williams planned the crime in detail by gathering names of potential victims, and by discussing and considering the victims' vulnerabilities; (3) the victim's age in that she was nearly eighty-three years old and was specifically targeted by Williams due to this apparent vulnerability; and (4) Williams's criminal history which revealed a pending charge for armed robbery. Furthermore, the trial court found the following significant mitigating circumstances: (1) Williams showed some remorse for his crime; (2) Williams's age when he committed the crime; and (3) Williams entered a guilty plea. After considering the aggravating and mitigating circumstances, the trial court once again sentenced Williams to an enhanced term of sixty years in the Indiana Department of Corrections.

The issue is whether the trial court abused its discretion in sentencing Williams. In general, sentencing lies within the discretion of the trial court. Henderson v. State, 769 N.E.2d 172, 179 (Ind. 2002). Thus, we review trial court sentencing decisions only for an abuse of discretion, including a trial court's decision to increase the presumptive sentence because of aggravating circumstances. Powell v. State, 769 N.E.2d 1128, 1134 (Ind. 2002), reh'g denied. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). A trial court relying upon aggravating and mitigating factors to enhance or

reduce a sentence would have to: (1) identify the significant aggravating factors; (2) relate the specific facts and reasons that the court found those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003).

Here, Williams does not allege that the trial court failed to identify or consider certain mitigating circumstances or that the aggravating circumstances were invalid. Rather, Williams argues that the trial court failed to adequately evaluate and balance the aggravating and mitigating circumstances to determine if the aggravators outweighed or offset the mitigators. Accordingly, he argues that a proper balancing of the mitigating and aggravating circumstances warrant a sentence no greater than the fifty-five year presumptive term.⁴ We find little support in the record for Williams' argument.

"The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. A trial court judge is not required to assign in a statement accompanying an enhanced sentence specific weight to each aggravating and mitigating circumstance. Hollen v. State, 761

⁴ Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Under the amended sentencing scheme, trial courts may impose any sentence within the proper statutory range regardless of the presence or absence of aggravating or mitigating circumstances. Ind. Code § 35-38-1-7.1(d). Applying the former sentencing statutes, we conclude that the trial court did not abuse its discretion. Moreover, application of the amended sentencing statutes would not change the result here.

N.E.2d 398, 402 (Ind. 2002). But a reasonably detailed sentencing statement is required and assigning relative weights facilitates appellate review in those situations where one or more invalid aggravating circumstances have been utilized. Id.

Though there is no indication that the trial court specified the weight of each individual mitigating and aggravating circumstance, the trial court was not required to do so. The trial court engaged in the proper evaluative process required of it when resentencing Williams by issuing a reasonably detailed sentencing statement. During the resentencing hearing, the trial court considered and evaluated each of William's proffered mitigating circumstances and weighed them in light of the aggravating circumstances.

The trial court attributed little mitigating weight to Williams's remorseful statements, stating that "the Court is suspicious [of these statements] . . . based upon the timing. Many people are remorseful after they get caught, after they suffer the consequences for their crime." Resentencing Hearing at 17. Similarly, the trial court assigned Williams's age little mitigating weight, finding that any mitigation due to his age would be offset by the extreme age of the victim. Lastly, the trial court considered Williams's guilty plea and assigned it significant mitigating weight. However, in balancing the mitigating and aggravating factors together, the trial court concluded, "the aggravating circumstances, specifically the age of the victim and the fact that she was selected because of her age and vulnerabilities significantly outweigh any mitigating circumstances." Resentencing Hearing Transcript at 17. Thus, we conclude the trial court did not abuse its discretion in weighing the aggravating and mitigating circumstances to determine Williams's sentence.

For the foregoing reasons, we affirm Williams's sentence for felony murder.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur